

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 745**

[OPPTS-62131; FRL-4637-5]

RIN 2070-AC65

**Lead; Requirements for Hazard Education Before Renovation of Target Housing**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** As mandated by Title IV of the Toxic Substances Control Act, EPA proposes requirements to ensure that owners and occupants of target housing fully understand the potential hazards of lead-based paint exposure before certain renovations are begun on that housing. Specifically, before renovating target housing for compensation, renovators would be required to provide an EPA lead hazard information pamphlet to the owners and occupants of the housing. In addition to providing general information on the health hazards associated with lead, this information pamphlet would advise owners and occupants to take appropriate precautions to avoid exposures to lead-contaminated dust and lead-based paint debris that is sometimes generated during renovations.

**DATES:** Written comments in response to this proposed rule must be received on or before May 9, 1994. If persons request an opportunity for oral comment, EPA will consider holding an informal hearing in Washington, DC. The exact date, time, and location of such a hearing, if held, will be announced in the *Federal Register*. Requests for oral comment must be received by April 8, 1994. EPA will decide whether to hold such a hearing by April 28, 1994.

**ADDRESSES:** Submit three copies of all written comments to: TSCA Document Receipts (7407), Rm. NE-G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. All comments on this proposed rule should be identified by the docket number OPPTS-62131. For further information regarding the submission of comments containing confidential business information, see Unit X of this preamble.

**FOR FURTHER INFORMATION CONTACT:** For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-554-1404, TDD: 202-554-0551. For technical information contact: Charles Franklin, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-1781, Fax number: 202-260-0770.

**SUPPLEMENTARY INFORMATION:****I. Statutory Authority**

This proposed rule is issued under the authority of section 406(b) of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2686(b). TSCA was amended in 1992 to add Title IV, entitled Lead Exposure Reduction, by section 1021 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. 102-550.

**II. Background****A. Legal Background**

In 1992, Congress, recognizing the need to control the hazards of exposure to lead-based paint, passed the Residential Lead-Based Paint Hazard Reduction Act of 1992, Pub. L. 102-550 ("the Act"). Congress recognized that lead-poisoning is a particular threat to children under age 6, and emphasized the needs of this vulnerable population within the Act. The stated purposes of the Act are: (1) To develop a strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible; (2) to reorient the national approach to the presence of lead-based paint in housing to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock; (3) to encourage effective action to prevent childhood lead-poisoning by establishing a workable framework for lead-based paint hazard evaluation and reduction and by ending the current confusion over reasonable standards of care; (4) to ensure that the existence of lead-based paint hazards is taken into account in the development of Government housing policies and in the sale, rental, and renovation of homes and apartments; (5) to mobilize national resources expeditiously, through a partnership among all levels of government and the private sector, to develop the most promising, cost-effective methods for evaluating and reducing lead-based paint hazards; (6) to reduce the threat of childhood lead-poisoning in housing owned, assisted, or transferred by the Federal Government; and (7) to educate the public concerning the hazards and sources of lead-based paint poisoning

and steps to reduce and eliminate such hazards (section 1003 of the Act).

Actions under some sections of the Act are to be developed and administered by the Department of Housing and Urban Development (HUD), some by EPA, and some jointly accomplished by both agencies. Several of the sections call for EPA consultation with other Federal agencies. Section 1021 of the Act amends TSCA (15 U.S.C. 2601, *et seq.*) by adding Title IV, entitled "Lead Exposure Reduction."

Today's proposed rule is issued under the authority of section 406(b) of TSCA's Title IV. Section 406(b) directs EPA to issue requirements for the provision of a lead hazard pamphlet (developed under section 406(a)) to owners and occupants of target housing before persons performing renovation work for compensation begin such activities.

Below is a more detailed discussion of several related provisions of the Act which provides context for many of the decisions made during the development of this proposed rule.

Section 406(a) of TSCA requires EPA to publish, after consultation with HUD and the Department of Health and Human Services (HHS), and after notice and an opportunity for public comment a pamphlet on lead and the hazards of exposure to lead-based paint in the home. The availability of this pamphlet for public comment is published elsewhere in this issue of the *Federal Register*. Following the 60-day comment period, EPA will incorporate comments as appropriate and announce the availability of the revised final version of the pamphlet in the *Federal Register*. In addition to outlining health effects and symptoms of lead exposure, section 406(a) requires that this pamphlet contain information on the potential hazards of renovating dwellings containing lead-based paint; recommend the performance of an inspection or risk assessment for lead-based paint before beginning renovations in target housing; suggest precautionary measures for protecting occupants during renovations in homes containing lead-based paint; and identify Federal, State, and local source of information on lead and lead-based paint.

Section 402(c)(1) of TSCA directs EPA to issue guidelines for the conduct of renovation and remodeling activities which may create a risk of exposure to dangerous levels of lead when performed in target housing, public buildings constructed before 1978, and commercial buildings.

Section 401 of TSCA provides a general definition of a lead-based paint

hazard. Congress directed EPA under section 403 to issue regulations defining this term more specifically.

Section 404 of TSCA directs EPA to develop an application process for those States or Tribes which seek to administer and enforce the standards, regulations, and requirements established under sections 402 and/or 406. Section 404 also directs EPA to develop and issue a Model State Program for use by States/Tribes pursuing authorization under these provisions. The authorization process for States and Tribes will be proposed by EPA in a separate rulemaking in the Federal Register, including specific definitions for the terms "State" and "Tribe." This proposed rule does, however, include information on the model State/Tribal program for the provisions required under section 406.

Two sections of the *Residential Lead-Based Paint Hazard Reduction Act of 1992* also require the dissemination of EPA's lead hazard pamphlet that is being developed pursuant to section 406(a) of TSCA. First, section 1018 requires EPA and HUD to promulgate joint regulations for disclosure of lead-based paint hazards in target housing which is offered for sale or lease. The section 1018 regulations include the requirement that the lead hazard pamphlet be given to prospective purchasers or lessees. Section 1018 requirements will be proposed by EPA and HUD in a joint rulemaking in a future issue of the Federal Register. Second, section 1012 amends section 302 of the *Lead-Based Paint Poisoning Prevention Act* (42 U.S.C 4822) to require the provision of EPA's lead hazard information pamphlet to purchasers and tenants of Federally-assisted housing by the Secretary of HUD. The section 1021 requirements are being developed by HUD as a separate initiative.

#### B. Lead Background

1. *Lead and lead-based paint.* Lead is a soft, bluish metallic element mined from rock and found in its natural state all over the world. Lead is virtually indestructible, is nonbiodegradable, and has been known since antiquity for its adaptability in making various useful items. In modern times it has been used to manufacture many different products, including paint, batteries, pipes, solder, pottery, and gasoline. From the turn of the century through the 1940's, paint manufacturers frequently used lead as a primary ingredient in many oil-based interior and exterior house paints. Usage gradually decreased through the 1950's and 60's as latex paints (which are generally lead-free) became more

widespread. Although the Consumer Product Safety Commission (CPSC) banned lead-based paints from residential use in 1978 (paint currently may not have greater than .06 percent lead by weight), HUD estimates that 75 percent of the houses built in the United States before 1978 contain some lead-based paint (Ref. 3). By current estimations, approximately 57 million homes may contain lead-based paint (Ref. 3). This lead-based paint may pose a potential hazard to the occupants under some conditions.

2. *Lead hazards.* Lead affects virtually every system of the body. While it is harmful to individuals of all ages, lead exposure is especially harmful to children, fetuses, and women of childbearing age. Results of recent studies suggest that lead's adverse effects occur at blood-lead levels previously thought to be safe; in fact, there does not yet appear to be a discernable threshold for the adverse effects of lead on the young.

Lead poisoning has been called "the silent disease" because its effects often occur gradually and imperceptibly, showing no obvious symptoms. Over time, low levels of lead in the bloodstream can cause learning disabilities, interfere with growth, cause permanent hearing and visual impairment, and cause other damage to the brain and nervous system. In large doses, lead can cause blindness, brain damage, convulsions, and even death. Lead exposure before or during pregnancy can also affect fetal development and cause miscarriages.

In 1991, the Secretary of HHS characterized lead poisoning as the "number one environmental threat to the health of children in the United States" (Ref. 1).

Although the percentage of children with elevated blood-lead levels has declined over the last 20 years with the reduction of lead in gasoline, millions of U.S. children still have levels of lead in their blood high enough to seriously threaten their health (Ref. 1).

Lead-based paint poses a health threat through various routes of exposure. Children under age 6 may ingest lead-based paint chips from flaking walls, window wells, and doors. Lead from exterior house paint can flake off or leach into the soil around the outside of a home, contaminating children's playing areas. Dust caused during normal lead-based paint wear (especially around windows and doors) can create an invisible film over surfaces in a house. In some cases, cleaning and renovation activities can actually increase the threat of lead-based paint exposure by dispersing fine

lead dust particles in the air and over accessible household surfaces. Both adults and children can receive hazardous exposures by inhaling the fine dust or by ingesting paint-dust during hand-to-mouth activities.

#### III. Definitions

To implement the section 406 requirements, a number of terms need to be defined. This section will provide the proposed regulatory definition first in quoted text followed by an explanation of the definition's source. Where possible, EPA has drawn definitions directly from Title IV of TSCA. In cases where the statute either failed to define terms necessary for the rule or did not provide a complete enough definition, EPA is proposing appropriate definitions, along with an explanation of their sources and discussion of relevant issues. EPA is accepting comment on all definitions not taken directly from the statute.

Unless otherwise indicated, all definitions will be located in Subpart A at 40 CFR 745.3 (Definitions). Definitions not included in Subpart A would be applicable only to the specific subpart in which they appear, in this case, Subpart F.

a. *Act* means the Toxic Substances Control Act (TSCA), 15 U.S.C. 260 *et seq.*

b. *Administrator* means the Administrator of the Environmental Protection Agency.

c. *Common area* means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

EPA developed this definition by modifying a definition provided in HUD's September 1990, version of *Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing*. While EPA is proposing this definition for use under the section 406 regulatory requirements, which only addresses target housing, this definition would potentially be applicable to other rulemakings required pursuant to TSCA Title IV and the Residential Lead Based Paint Hazard Reduction Act (Pub. L. 102-550). The modifications to HUD's definition were necessary to broaden the scope of "common area" to meet the requirements of other rulemakings which may refer to many types of buildings.

d. *Dwelling unit* means a single, unified combination of rooms designed for use as a dwelling by one family.

EPA is proposing to use the same definition promulgated by HUD in a final rule published in the Federal

Register of August 17, 1993 (58 FR 43522).

e. *EPA* means the Environmental Protection Agency.

f. *Lead-based paint* means paint or other surface coatings that contain lead in excess of 1.0 milligrams per centimeter squared or 0.5 percent by weight or (A) in the case of paint or other surface coatings on target housing, such lower level as may be established by the Secretary of Housing and Urban Development as defined under section 302(c) of the Lead-Based Paint Poisoning Prevention Act, or (B) in the case of any other paint or surface coatings, such other level as may be established by the Administrator.

This definition appears in section 401(9) of TSCA.

g. *Lead-based paint hazard* means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects in pregnant women or young children.

This definition appears in section 401(10) of TSCA.

h. *Multi-family housing* means a housing property consisting of more than four dwelling units.

EPA has drawn this definition from section 544 of Title V of the Community Housing and Development Act of 1992 (Pub. L. 102-550). The provisions of Title V are directed at HUD and do not specifically address EPA mandates. However, as EPA and HUD will both be involved in developing regulations involving lead-based paint in housing (including multi-family housing), EPA believes that its definition should be consistent with both current and future Federal lead-based paint regulations.

i. *Owner* means any individual, partnership, corporation, or trusteeship that has legal right of possession of residential property, or any person legally authorized to represent that individual, partnership, corporation, or trusteeship.

EPA intends to use this definition to clarify that the owner of the housing should be considered the individual possessing and managing a property, rather than a bank or other loan-related organization. EPA invites comment on this definition.

j. *Person* means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity, any State or political subdivision thereof, any municipality, any interstate body, any Indian tribe, and any department, agency, or instrumentality of the Federal government.

EPA is proposing to use the same definition of person as used by EPA's Asbestos program in 40 CFR 763.63(1), (with the additional reference to Indian

tribe) to clarify that these many types of entities are also regulated parties.

k. *Residential dwelling* means (a) a single-family dwelling, including attached structures such as porches and stoops, or (b) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

This definition appears in section 401(14) of TSCA.

l. *State* has the same meaning as in section 3 of the Toxic Substances Control Act.

m. *Target housing* means any housing constructed prior to 1978, except 0-bedroom dwellings, or housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in the dwelling). In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, the Secretary of Housing and Urban Development, at the Secretary's discretion, may designate an earlier date.

This definition is provided in section 401(17) of TSCA. The Act excludes housing constructed after 1978 since lead-based paint was banned by CPSC from all residential use after that date.

EPA interprets the term "0-bedroom dwelling" to mean any dwelling in which the living area is unseparated from the sleeping area. Under this definition, efficiencies and studio apartments, loft space, and single-room dormitory units would be exempt from the requirements of this proposed rule unless children under 6 years of age reside or may reside in the unit.

As directed in the statute, the exclusions for 0-bedroom dwelling, elderly housing, and handicapped housing do not apply to any housing in which children under 6 years old reside or are expected to reside.

EPA also considered whether Congress intended to include hotels, motels, inns, and other commercial lodging facilities in the term "housing." Although not specifically stated, EPA believes it is reasonable to interpret that Congress' intent was to distinguish residential housing from commercial lodging facilities. Specifically, the definition of target housing intends to capture housing designed for long-term or continuous residence (e.g., apartments, condominiums, and houses), as opposed to lodging facilities offering temporary accommodations (e.g., hotels and motels). Given the high frequency and short duration of transactions, EPA believes it is impractical to apply the requirements of this subpart to rental transactions in motels, hotels, and other commercial

lodging facilities. In cases where families with children under 6 years of age might rent or purchase such units in long-term residences, however, EPA believes it is consistent with the statute for those establishments to be considered target housing under this subpart's requirements.

EPA requests comment on this definition as it relates to the requirements under section 406 of TSCA.

n. *TSCA* means the Toxic Substances Control Act (15 U.S.C. *et seq.*)

This definition appears in section 401(9) of TSCA.

o. *Renovation* means the modifying of an existing structure, or portion thereof, when exposure to the hazards of lead-based paint may result, unless the activity is performed as part of a lead abatement program by a certified contractor, or unless otherwise regulated by EPA in Subpart G.

Section 406(b) of TSCA directs EPA issue regulations governing any person who performs for compensation, a renovation of target housing. Because the statute fails to define "renovation," EPA has sought to develop a definition that is both consistent with existing regulations and effective in addressing the exposure prevention goals of the statute. EPA is primarily concerned with activities that may disturb existing lead-based paint, and which may pose a potential hazard to owners and occupants of the housing. Although such a distinction is not explicitly stated in the language of section 406(b), EPA believes that such a distinction is consistent with the hazard reduction goal of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and Title IV of TSCA.

EPA is considering a number of approaches to defining the term, and requests comment on each approach in terms of which could be most effectively used (individually or in combination) to define "renovation" for this rulemaking. The approaches being considered include:

1. *Definition modeled after EPA's Asbestos Program.* EPA's preferred option, as proposed in the regulatory text, is to use a general definition drawn from language used by EPA's Asbestos program. In 40 CFR 763.121(b), EPA regulations define renovation as "Modifying of any existing structure, portion thereof, where exposure to airborne asbestos may result." By replacing references to asbestos with lead-based paint, EPA's proposed definition provides a flexible framework for identifying which activities would be regulated pursuant to the section 406(b) requirements.

Despite the clear statutory distinction between "renovation activities" and "lead-based paint activities", EPA recognizes that many of the activities identified in the renovation definition may also be performed as part of lead-based paint abatement programs. In cases where the activities being performed meet the definition of a lead-based paint abatement or lead-based paint activity, EPA intends for the activities to be regulated under the more comprehensive section 402(a) standards and requirements, and has therefore included an exemption for any activity separately regulated under the more stringent regulations to be issued in Subpart G. The regulations governing performance of lead-based paint activities will be proposed in a separate notice in the Federal Register in the future. At that time, EPA will propose specific definitions for lead-based paint activities and abatements, and will request further comment.

One drawback of such a general definition is that it does not provide an objective way of identifying which activities are of concern. This lack of specificity may pose a problem for the regulated community in complying with the rule and for the government in effectively enforcing it. For that reason, EPA believes that this general definition may need to be strengthened by the incorporation of additional criteria, as offered below.

**2. Develop list of specific activities of concern.** Recognizing the need for specific information on what activities are defined as renovations, EPA is considering incorporating a list of regulated activities into the definition. Section 402(c) of TSCA directed EPA to conduct a study of the extent to which persons engaged in various types of renovation and remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings are exposed to lead in the conduct of such activities. In mandating this study, Congress clearly did not intend for the results to be used as the basis for developing the TSCA section 406 renovation regulations--the deadline for completion of the study is a full 12 months after the deadline for promulgation of the final section 406 regulations. Nevertheless, as the activities under study represent EPA's preliminary determination regarding the universe of activities that may be of concern, EPA believes that they comprise a logical set of activities for consideration as renovation activities. The activities being studied were chosen based on discussions with experts familiar with the renovation and

remodeling industry, and include the following:

- (1) Paint removal (e.g., floor refinishing and stairs refinishing).
- (2) Surface preparation for painting (both interior and exterior).
- (3) Removal of large structures other than roof (e.g., walls, ceiling, large surface replastering, major replumbing, room additions).
- (4) Window replacement.
- (5) Enclosure of interior painted surfaces (e.g., wallpapering).
- (6) Enclosure of exterior painted surfaces (e.g., siding).
- (7) Removal of carpet or other floor coverings (e.g., linoleum).
- (8) Repairs or additions with isolated small surface disruption (e.g., carpentry, replacement of lead painted fixtures, installation of light fixtures, electrical repair and rewiring, plumbing repair, insulation addition, furnace cleaning, ceramic tile installation, counter top replacement, door replacement, storm window installation, and window repair).
- (9) Roofing replacement and repair.
- (10) Exterior soil disruption (e.g., landscaping, deck additions, sewer/water line replacement or repair, basement waterproofing, garage repair, concrete/brick/masonry work, driveway/walk installation, and septic tank/cesspool replacement).

These activities represent a range of activities that may be performed during "renovation and remodeling." Although section 406(b) refers specifically to "renovations" only, EPA believes that the commonly used meanings of the two terms do not significantly differ and that any of the listed activities could be conducted as part of a renovation program. Therefore, pending evidence to the contrary, all of the activities noted above could potentially merit inclusion under EPA's definition of renovation.

EPA is requesting comment (and data, if available) regarding which activities should (or should not) be included in any definition of renovation. Based on the comments EPA receives, as well as any new or additional relevant information EPA collects, EPA may define some or all of the activities listed above as renovation activities specifically regulated by the final rule. EPA also may include additional activities, if appropriate, in the final rule's definition of renovation, and requests comments on whether some activities of concern may be absent from the current list.

**3. Use the Occupational Safety and Health Administration's (OSHA) list of construction tasks.** EPA is considering using the construction tasks identified by OSHA as offering some risk of lead-

exposure to workers to identify renovation activities that could result in lead exposure to housing occupants. These tasks were identified in the interim final rule entitled "Lead Exposure in Construction" (58 FR 26590, May 4, 1993). EPA requests comment on whether such tasks adequately reflect the activities conducted during housing renovations.

**4. Identify specific job classifications.** EPA is considering using specific job classifications that involve performing remodeling or renovation activities that may exacerbate the risk of lead-based paint exposure in target housing as a basis for identifying regulated activities. EPA has considered several ways that specific worker classifications could be identified.

One approach would be to base the listing on the worker classifications included in EPA's study under TSCA section 402(c). These classifications are being studied to measure the levels of exposure to lead-based paint stemming from the renovation activities. The current classifications being studied include: Painters; floor refinishing contractors; plaster/drywall contractors; exterior siding contractors; window replacement contractors; electricians; plumbers; roofers; linoleum/tile contractors; carpet installers; cabinet installers; heating/AC contractors; carpenters; insulation contractors; basement waterproofing contractors; bathroom remodelers; kitchen remodelers; landscaping/excavation contractors; and historic renovation contractors. These classifications were developed through discussions with experts and professionals familiar with the renovation and remodeling industry.

In identifying specific job classifications, EPA is also considering linking the above classifications to Standard Industrial Classification (SIC) Codes for the business, to ensure a common standard of identification. If EPA could identify specific SIC codes that performed renovations involving target housing and potential lead-based paint exposure, then such a classification would provide a clear method for identifying regulated parties. Currently, the Agency does not prefer this option because of concerns that many workers and firms may conduct activities that spill over into activities that don't affect lead-based paint, raising questions of how closely SIC codes would track the performance of renovations in housing involving lead-based paint. In addition, many individuals engaged in renovation activities may perform many different tasks covering several job

classifications, further clouding issues of enforcement and compliance.

Regarding the whole question of identifying job classifications, EPA requests comment on what trades are missing from, or inappropriate for, the list above and whether any such list could be practically applied.

5. *Identify all home improvement activities within a specified cost range.* Another option being considered is to target all renovation, remodeling, and home improvement activities within a specific cost range (for example, any home improvement costing over \$250 would be considered a renovation). While this option provides a simple scheme for identifying regulated activities, it does not necessarily focus on relevant activities. Because some inexpensive renovation activities may pose a significant exposure hazard, EPA is concerned that such a definition could result in the omission of activities that are thought to be high risk but low in cost.

6. *Identify all home improvement activities within a specified size.* EPA is also considering basing the definition of renovation on the size of a job. For example, size could be measured by the number of square feet of painted surface disturbed, the number of different painted surfaces disturbed, or simply the total area of the dwelling undergoing modification. EPA's main concern with this option is that some activities while localized to a very small area, might release significant amounts of lead-based paint or lead-based paint, and that such a criterion might fail to capture the activities of concern. However, as it could potentially provide a simple method for identifying regulated transactions, EPA requests comments on the feasibility of such an approach.

p. *Renovator* means any person who performs for compensation a renovation of target housing or public buildings.

Although Title IV of TSCA does not provide a definition of renovator, section 406(b) specifically identifies the regulated community as "each person who performs for compensation a renovation of target housing."

EPA recognizes that in many large multi-family dwellings or public buildings, renovation activities may be performed by maintenance staff retained by the owner of the building. Because these individuals would still be performing such activities for compensation (through salary or retainer), EPA would consider such individuals as renovators for the purpose of this proposed rule.

#### IV. Regulatory Requirements

##### A. Lead Hazard Information Pamphlet

Section 406(b) directs the Administrator to promulgate regulations "to require each person who performs for compensation a renovation of target housing to provide a lead hazard information pamphlet to the owner and occupant of such housing prior to commencing the renovation." Section 745.87 of the regulatory text would require renovators to provide owners and heads-of-households occupying target housing with copies of the pamphlet: *Lead-Based Paint: Protect Your Family* before beginning renovations.

Recognizing that many target housing units may be occupied by families other than the dwelling owner, as in the case of rental housing, EPA proposes to require the renovator to provide the pamphlet to the head of each household occupying the unit(s) being renovated, as well as to the person requesting and paying for the renovation work. This interpretation is supported by the language in section 406(b), which explicitly states that the pamphlet must be provided to the owner and occupant of such housing.

In addition, because some housing may be managed by an individual or firm on behalf of the owner, the regulations would allow such an agent to represent the owner for the purposes of the provisions of this proposed rule.

Finally, EPA recognizes that there may be some types of renovations that will occur in "emergency situations" requiring action before all occupants can be notified and before they can fully comply with these notification requirements. EPA requests comment on identifying these situations and on what may be an appropriate way to address them under these regulations.

The final pamphlet will be available to the public and the regulated community through the Government Printing Office (GPO) for a nominal fee for both individual and bulk purchases. EPA is also encouraging persons to make their own reproductions of the pamphlet, and will make a limited number of camera-ready copies of the final pamphlet available to organizations that wish to print copies for private distribution. Any copies reproduced for use in complying with this rulemaking, however, must be copied in full, and may not revise or delete material from the pamphlet except to add or revise State or local sources of information. EPA requests comment on other mechanisms for distributing the pamphlet to the general public and the regulated community.

As required by section 406(a) of TSCA, EPA will, in consultation with HHS and HUD, revise the pamphlet necessary to maintain its technical accuracy. Following each change, will issue notice of the revised version's availability in the Federal Register.

##### B. Acknowledgement

To help ensure the timely notification of owners and occupants regarding potential hazards of renovation activities in target housing, § 745.87 would require that renovators obtain signed, dated acknowledgement from each owner and head of household occupying the renovated housing, indicating that the person had received the pamphlet on the given date. The proposed acknowledgement text would state:

I have received the pamphlet, *Lead-Based Paint: Protect Your Family*, and am aware of the potential health risks associated with renovating housing containing lead-based paint.

The statement would be signed and dated by the housing owner and head of households occupying the housing and would be retained by the renovator. This acknowledgement could exist as a separate sheet or as a part of each service contract or agreement. EPA proposes to require that the acknowledgement text be printed in at least 12-point type to ensure that the text is readable and noticeable.

Recognizing the importance of reaching non-English speaking residents of target housing, EPA is proposing requirements to address renovations performed in predominantly non-English speaking areas. If the parties to a written service contract or agreement, and if the service contract or agreement is in a language other than English, the acknowledgement would have to be in the same language as the contract agreement. The Agency proposes this provision as a necessary measure in achieving a more equitable Federal lead-based paint program.

EPA is requesting comment on the provisions, including whether the alternative language provisions provide an appropriate level of protection to non-English speaking occupants of target housing.

##### C. Renovations in Multi-Family Dwellings

EPA has also considered the issue of regulating renovation activities that occur in buildings containing many separate housing units. Such dwellings pose additional challenges because, depending on the type of renovation being conducted, as the number of units in the dwelling increases, the number of

distribution may be increasingly difficult for renovators. At the same time, since many multi-family dwellings (defined for this proposed rulemaking as housing properties consisting of more than four dwelling units) may have been built before lead-based paint use was restricted, these dwellings may pose lead-based paint hazards to occupants if renovations are conducted without care.

EPA has considered two issues regarding renovations in multi-family dwellings: Renovations conducted within specific units of a multi-family dwelling, and renovations performed in common areas of the multi-family dwelling.

#### 1. Renovations in individual units.

EPA believes that renovations performed within specific units of multi-family dwellings should be treated in the same manner as single-family dwellings (housing properties containing less than five dwelling units); the owner and occupants should be notified and provided a pamphlet in advance of commencement of renovation activities. The Agency sees no rationale for distinguishing between the two regarding the risks of exposure.

During large-scale or long-term renovations to units in multi-family housing, EPA proposes the following clarification. In cases where an owner employs a renovator to conduct renovations in several different housing units within a multi-family dwelling, EPA would still require the renovator to (1) Provide the occupants of each unit undergoing renovation with a copy of the pamphlet and (2) maintain signed acknowledgements from each affected head-of-household. The renovator could fulfill his/her obligations regarding the owner, however, by providing one pamphlet and maintaining one signed acknowledgment covering all renovations performed throughout the dwelling, rather than by repeating the same owner-notification activities for each unit or area renovated.

#### 2. Renovations in common areas.

EPA also believes that for the purposes of the section 406(b) rule, a practical distinction should be made between renovation activities in common areas of multi-family dwellings and renovations within specific living areas of the dwellings. Since renovation activities may occur in various hallways or lobbies of a building on a frequent basis, it could be impractical to require a renovator to provide all occupants with a new pamphlet before the commencement of each renovation, especially in dwellings with larger numbers of residential units. Such a requirement would be difficult to

implement and enforce, and would likely lead to non-compliance.

EPA still believes that it is important that occupants be informed of renovations in common areas as they occur to provide warning of potential lead-based paint hazards and to ensure their ability to take appropriate precautions. Therefore, under § 745.87, EPA proposes to require that before conducting target renovation activities in common areas of multi-family target housing, the renovator would be required to notify, in writing, all occupants of the dwelling of the intended renovation and to make the EPA pamphlet *Lead-Based Paint: Protect Your Family* available upon request. This notification would be required to include: The general nature and location(s) of the planned renovation activities; the expected starting and ending dates of the planned renovation activities; and a statement of how the occupant can obtain the lead hazard information pamphlet from the renovator.

EPA recognizes that in some cases, large renovations could take an extended period of time or cover several different common areas of a multi-family dwelling. In that case, if the initial notification provides accurate information on the scope of renovations planned in the various areas, with an accurate schedule of their performance, then that initial notification would be sufficient to meet the requirements of this proposed rulemaking. If the scope, location, or timeframe of the activities change in a way not reflected in the original notification, then the renovator would be obligated to provide updated information in an additional notification process. This updated information is necessary to ensure that owners and occupants can, if necessary, adequately protect themselves from exposure to the hazards of lead-based paint.

Notification activities could be performed by the renovator or by the owner of the dwelling on behalf of the renovator. The notification process could be accomplished by distributing a letter or flyer containing the required information to each head of household occupying the housing. Even if the owner agreed to perform the notification activities, however, the responsibility to assure compliance would still rest with the renovator, as required by section 406(b).

#### D. Recordkeeping Requirements

Section 407 of Title IV of TSCA gives EPA the authority to promulgate recordkeeping and reporting requirements that are necessary to implement Title IV effectively. EPA is

using this authority to propose the following requirements to ensure compliance and to aid EPA in its enforcement of the provisions in this proposed rule.

Under EPA's proposed § 745.90, renovators would be required to keep, for 3 years after completion of the renovation, specific records documenting compliance with the rule.

If all renovation activities occur in private areas of target housing units, these records would include:

1. The address/location of the renovated target housing. This information is important for EPA compliance monitoring and enforcement actions.
  2. A list of all heads of households occupying the renovated target housing unit(s) at the commencement of renovations. Because the rule would require that both the owners and occupants of target housing receive the pamphlet, EPA is proposing to require retention of this list as a record of the persons that should have received the pamphlet. EPA is focusing on occupants of the housing at the commencement of renovations recognizing that individuals who become occupants after renovations have begun would have already received the pamphlet under the requirements being developed pursuant to section 1018 of the Lead-Based Paint Hazard Reduction Act of 1992.
  3. Copies of the signed and dated acknowledgements from each housing owner and each head of household occupying the renovated unit(s). EPA proposes to require this record as the primary proof of compliance with the regulation. In cases where EPA began an enforcement action based on a tip or complaint, the acknowledgement form would be a crucial record in establishing compliance with the rule.
- In the case of renovation activities performed in common areas of multi-family target housing, the renovator would still be required to maintain the following records:

1. The address/location of the renovated target housing.
  2. Signed and dated acknowledgements from the owner(s) of the target housing requesting the renovation.
  3. A signed and dated statement describing the steps performed by the renovator or owner to notify all occupants of the intended renovation activities and to provide the lead hazard information pamphlet upon request.
- EPA is proposing not to require specific language for the statement, provided that it clearly indicates: The dates between which renovation activities took place; the general nature of the



renovation activities conducted; and the measures taken to notify all occupants of the planned renovation activities as outlined in the proposed § 745.87. This statement would be signed and dated by the owner as well as the renovator.

4. Copies of any letter or flyer sent to the occupants of the housing as part of the notification process.

These records would be retained by the renovator for 3 years after completion of the renovation as proof of compliance.

EPA requests comment on whether the proposed recordkeeping requirements are reasonable, too stringent, or not stringent enough, and whether there may be other more effective recordkeeping requirements or mechanisms to facilitate compliance monitoring.

#### V. Enforcement

Failure or refusal to comply with any provision of the final rule would be a violation of TSCA section 409, subjecting the violator to penalties under TSCA section 16 (15 U.S.C. 2615). These penalties include the following:

1. *Civil penalties.* Any person who violates a provision of the final rule would be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation.
2. *Criminal penalties.* Any person who knowingly or willfully violates any provision of the final rule would, in addition to any civil penalty, be subject upon conviction, to a fine of not more than \$25,000 for each day of violation, or to imprisonment for not more than 1 year, or both.

#### VI. State/Tribal Administration and Enforcement of Section 406(b)

Section 404(a) of TSCA directs EPA to develop an application process for those States or Tribes which seek to administer and enforce the standards, regulations, and requirements established under sections 402 and/or 406. Section 404(b) states that the Administrator may approve such an application only after finding that the State/Tribal program is at least as protective of human health and the environment as the Federal program established according to the mandate of section 402 or 406 of TSCA, and that it provides adequate enforcement. The procedures for submitting a State/Tribal application will be proposed in a separate Federal Register notice in the future.

For State and Tribal implementation purposes, EPA recognizes a distinction between section 406(a), the development of a lead hazard information pamphlet, and regulatory

requirement section 406(b), for distribution of the pamphlet. Since the pamphlet must be developed in consultation with HHS and HUD, for use in other rules in other sections of the Residential Lead-Based Paint Hazard Reduction Act of 1992, EPA will limit the authorization of State/Tribal programs to administration of section 406(b). EPA believes that the authority to develop a lead hazard information pamphlet cannot be delegated to States or Tribes, given the dependence of many agencies on the pamphlet, and the need for uniformity in several statutory sections of the Act.

#### VII. Model State Program

To support State and tribal efforts to develop an authorized program, section 404(d) of TSCA directs EPA to promulgate a model State program which may be adopted by any State which seeks to administer and enforce the provisions of sections 402 and 406 of TSCA. Given that section 404(b) requires authorized State programs to be at least as protective as the Federal program, the Agency expects that a State program seeking authorization, would resemble, in significant respects, the Federal program, and further, that the regulations proposed in §§ 745.80 through 745.99 would serve as an appropriate model for such a State program. Therefore, the Agency is at this time proposing these regulations as the model program.

Section 745.87 contains procedures and requirements for the provision of EPA's lead hazard information pamphlet to owners and occupants of target housing by renovators. The proposed § 745.90 contains recordkeeping requirements necessary to monitor and enforce compliance with the requirements.

This model will be especially useful to the many States that do not currently have notification requirements in residential housing. The Agency believes that adoption of this program would effectively increase the awareness of owners and occupants of target housing regarding the issues associated with renovating housing with lead-based paint. However, the State program need not duplicate the Federal program in order to receive authorization from EPA. A State may choose to develop its own program, and it would be evaluated to determine if it is as protective as the Federal program.

#### VIII. Procedures for Requesting a Public Hearing

If persons request time for oral comment, EPA will consider holding an informal hearing in Washington, DC.

Persons or organizations desiring to participate in the informal hearing must file a written request to participate. The written request to participate must be sent to the Environmental Assistance Division at the address listed under FOR FURTHER INFORMATION CONTACT and must be received by EPA by April 8, 1994. The written request to participate must include: (1) A brief statement of the interest of the person or organization in the proceeding; (2) a brief outline of the points to be addressed; (3) an estimate of the time required; and (4) if the request comes from an organization, a non-binding list of the persons to take part in the presentation. Organizations are requested to bring with them, to the extent possible, employees with individual expertise in and responsibility for each one of the areas to be addressed. Organizations which do not file written comments will not be allowed to participate at the hearing.

EPA will decide whether to hold a hearing by April 28, 1994.

#### IX. Rulemaking Record

A record for this proposed version of the rule has been established under docket number "OPPTS-62131." The public record is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The public version of the record (which does not contain confidential business information) is located in the TSCA NCIC, Rm. E-G102, 401 M St., SW., Washington, DC 20460.

The draft of the proposed rule submitted by the Administrator to OMB review prior to proposal will also be contained in the docket, as will the drafts of the final rule submitted for review before promulgation.

The following list of documents were used by the Agency in developing this regulation and can be found in the docket. Other documents, including those submitted with written comments from interested parties, will be included in the docket following the publication of this proposal in the Federal Register.

1. Alliance to End Childhood Lead Poisoning, *Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report*. October 6, 7, 8, 1991. (pp. A1-A10)
2. DOL, OSHA, *Lead Exposure in Construction; Interim Final Rule*. May 4, 1993.
3. EPA, *Lead Poisoning and Your Children*. EPA/800-B-92-0002, September 1992
4. EPA, DRAFT: *Reducing Exposure to Lead in the Home; An Action Guide for Families*. (January 1992).

5. U.S. Government Printing Office. *Code of Federal Regulations* July 1, 1992. (40 CFR 763.121)

6. U.S. Government Printing Office. *Code of Federal Regulations* July 1, 1992. (40 CFR 763.63(1))

7. U.S. Congress. *The Residential Lead-Based Paint Hazard Reduction Act of 1992* (Pub. L. 105-550).

8. HHS, PHS, CDC. *Preventing Lead Poisoning in Young Children; A Statement by The Centers For Disease Control*. October 1991.

9. HHS, PHS, ATSDR. *The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress*. July 1988. (pp. 1-16)

10. HUD, Office of Lead-Based Paint Abatement and Poisoning Prevention. *Lead-Based Paint; Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; Notice*. April 18, 1990.

11. HUD, Office of Lead-Based Paint Abatement and Poisoning Prevention. *Lead-Based Paint: A Threat to Your Children*. U.S. GPO: 1993-351-568. January 1993.

#### X. Confidential Business Information

While EPA does not anticipate the receipt of much (if any) confidential business information in connection with this proposed rule, a person may assert a claim of confidentiality for any business information, including all or portions of written comments, submitted to EPA in connection with this proposed rule. Any person who submits a comment subject to a claim of confidentiality must also submit a nonconfidential version. Any claim of confidentiality must accompany the information when it is submitted to EPA. Persons must mark information claimed as confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information in comments at the time it is submitted to EPA, EPA will place the information in the public record for this rulemaking without further notice to that person.

#### XI. References

1. Alliance to End Childhood Lead Poisoning. *Preventing Childhood Lead Poisoning: The First Comprehensive National Conference; Final Report*. October 6, 7, 8, 1991.

2. DOL, OSHA. *Lead Exposure in Construction; Interim Final Rule*. (May 4, 1993).

3. HUD, Office of Lead-Based Paint Abatement and Poisoning Prevention. *Lead-Based Paint; Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing; Notice*. April 18, 1990.

#### XII. Regulatory Assessment Requirements

##### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is "significant" because it raises novel policy issues arising out of its legal mandate in the Residential Lead-Based Paint Hazard Reduction Act.

EPA has prepared a Regulatory Impact Analysis (RIA) in conjunction with its proposed lead information disclosure rule for renovation activities. EPA finds that the proposed rule will not have an effect on the economy of \$100 million or more, will not result in major increases in costs or prices, and is not anticipated to have significant adverse effects on competition, employment, investment, or productivity in the relevant sectors.

EPA estimates the overall costs to affected entities to be \$59,700,000. This estimate includes costs for rule familiarization, information disclosure and obtaining required signatures, recordkeeping, and materials costs. EPA estimates that the provisions of the rule as proposed would add about \$5.00 to the cost of each transaction.

A copy of the RIA is available in the TSCA Nonconfidential Information Center (NCIC) (also known as the TSCA Public Docket Office), for review and copying (see Unit IX of this preamble).

This action was submitted to OMB for review, as required by Executive Order 12866, and any comments or changes made in response to OMB suggestions or recommendations have been documented in the public record.

##### B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." In an effort to identify and characterize the proposed rule's effects on small business, EPA has prepared an Initial Regulatory Flexibility Analysis (IRFA). This assessment has been included as part of the Regulatory Impact Analysis (RIA), and is summarized below.

In assessing small business impacts, EPA first developed an establishment profile for each major sector. This profile indicated that approximately 80 to 90 percent of all establishments in SICs 15, 17, 651, and 653 fell within the 1 to 9 employee size class. Thus, a substantial number of small firms are estimated to be potentially affected by the proposed rule.

To measure the cost impacts of the proposed rule on these small establishments, representative or model establishments were designed. These model establishments corresponded to typical establishments, with respect to number of employees and annual transaction volume, in each affected sector. Since transaction activity was reported to vary widely, a range of transaction volume was estimated for each establishment type.

For each model establishment, annual regulatory costs were then calculated and compared to annual labor and overhead costs. Ratios were computed for both high and low estimates of the range of transaction activity. In the case of a multi-trade renovation contractor, regulatory costs were found to represent from 0.05 to 0.14 percent of labor and overhead costs. In the case of a specialty trade contractor, impacts were somewhat higher, ranging from 0.35 to 0.84 percent. An establishment engaged in rental property management was projected to sustain impacts of 0.99 to 1.95 percent.

Thus, while a large number of small establishments will be potentially affected by the rule, cost impacts were not found to be of sufficient magnitude to cause undue harm to such



establishments. Consequently, no regulatory alternatives are being proposed in connection with small business impacts.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

#### C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1669.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (2136), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or by telephoning (202) 260-2740.

This collection of information has an estimated recordkeeping burden averaging 11.5 minutes per response (at 5.8 minutes/respondent), and to require 7.7 minutes per recordkeeper, annually. These estimates include time to review instructions, search existing data sources, gather and maintain the data needed, and complete the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch (2136), Environmental Protection Agency, 401 M St., SW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### List of Subjects in 40 CFR Part 745

Environmental protection, Abatement, Housing renovation, Lead, Lead-based paint, Reporting and recordkeeping requirements.

Dated: February 28, 1994.

Carol M. Browner,  
Administrator.

Therefore, it is proposed that Chapter I of 40 CFR be amended by adding a new part 745 to read as follows:

### PART 745—LEAD EXPOSURE REDUCTION

#### Subpart A—General Provisions

##### Sec.

- 745.1 Scope, purpose, and authority.
- 745.3 Definitions.
- 745.7 Confidential business information.

#### Subparts B–D (Reserved)

#### Subpart E—Residential Property Renovation

##### Sec.

- 745.80 Purpose, scope, and applicability.
- 745.85 Lead pamphlet.
- 745.87 Notification.
- 745.90 Recordkeeping requirements.
- 745.97 Penalties for noncompliance.
- 745.99 Effective date.

Authority: 15 U.S.C. 2686.

#### Subpart A—General Provisions

##### § 745.1 Scope, purpose, and authority.

(a) This part contains regulations developed under Title IV (15 U.S.C. 2681–2692) and section 6 (15 U.S.C. 2605) of the Toxic Substances Control Act.

##### § 745.3 Definitions.

For purposes of this part, the following definitions apply:

*Act* means the Toxic Substances Control Act (TSCA), 15 U.S.C. *et seq.*

*Administrator* means the Administrator of the Environmental Protection Agency.

*Common area* means a portion of a building generally accessible to all residents/users including, but not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, and boundary fences.

*Dwelling unit* means a single, unified combination of rooms designed for use as a dwelling by one family.

*EPA* means the Environmental Protection Agency.

*Lead-based paint hazard* means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects in pregnant women or young children.

*Multi-family housing* means a housing property consisting of more than four dwelling units.

*Owner* means any individual, partnership, corporation, or trusteeship that has legal right of possession of residential property, or any person legally authorized to represent that individual, partnership, corporation, or trusteeship.

*Person* means any natural person, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity, any state or political subdivision thereof, any municipality, any interstate body, any Indian tribe, and any department, agency, or

instrumentality of the Federal government

*Renovation* means the modifying of any existing structure, or portion thereof, where exposure to the hazards of lead-based paint may result, unless the activity is performed as part of a lead abatement program by a certified contractor, or unless otherwise regulated by EPA in Subpart G of this part.

*Renovator* means any person who performs for compensation a renovation of target housing or public buildings.

*Residential dwelling* means (1) a single-family dwelling, including attached structures such as porches and stoops, or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

*TSCA* means the Toxic Substances Control Act (15 U.S.C. *et seq.*).

##### § 745.7 Confidential business information.

Any person required to submit a document or report to the EPA under this part may assert a claim of confidentiality for the information submitted. Any claim of confidentiality must accompany the information when it is submitted to EPA. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

#### Subpart B–D (Reserved)

#### Subpart E—Residential Property Renovation

##### § 745.80 Scope, purpose, and applicability.

This subpart applies to renovation activities on target housing. Such housing may contain lead-based paint and lead-based paint dust that can pose a health hazard to occupants, especially young children and pregnant women. Persons or firms that perform renovation services for compensation on target housing must provide information on hazards of exposure to lead-based paint associated with renovation activities.

##### § 745.85 Lead pamphlet.

(a) *Availability of pamphlet to the general public and regulated community.* The most current version of EPA pamphlet No. XXX, entitled *Lead-*

*Based Paint: Protect Your Family*, is available to the public and the regulated community for a fee from the Government Printing Office (GPO). Interested parties should write to: Government Printing Office, Superintendent of Documents, Mail Stop XXX, Washington, DC 20402-9328. In addition, persons may reproduce this pamphlet, for use or distribution, providing that the text and graphics are reproduced in full.

(b) *Pamphlet elements.* The information contained and presented in this pamphlet is mandated in section 406(a) of TSCA (15 U.S.C. 2686), and may not be changed or omitted during any reproduction of the information for the purpose of compliance with this subpart.

#### § 745.87 Notification.

(a) Before beginning renovation activities on specific target housing units, renovators shall:

(1) Provide each owner and each head of household occupying the units to be renovated with a copy of the EPA pamphlet, entitled *Lead-Based Paint: Protect Your Family*.

(2) Obtain a signed, dated acknowledgement from the owners and each head of household occupying the housing unit affirming that they have received the pamphlet and are aware of the potential health hazards from renovating housing containing lead-based paint.

(i) The acknowledgement shall include the following language:

I have received the pamphlet entitled *Lead-Based Paint: Protect Your Family* and am aware of the potential health risks associated with renovating housing containing lead-based paint hazards.

(ii) Below the statement, the acknowledgement shall require the signature of each owner and head of household occupying the unit, along with their dates of signature.

(iii) The type size shall be no smaller than 12-point type.

(iv) The acknowledgement may be included as a separate sheet or as a part of any written contract or service agreement. It must be completed before the commencement of the target renovations.

(v) If the parties use a written contract or agreement which is written in a language other than English, the acknowledgement text shall be written in the same language as the text of the contract or agreement.

(b) Before beginning renovation activities in common areas of multi-family target housing, the renovator shall:

(1) Provide the owner(s) of the target housing requesting the renovation with a copy of the EPA pamphlet, entitled *Lead-Based Paint: Protect Your Family*.

(2) Obtain a signed, dated acknowledgement from the owner(s) of the target housing requesting the renovation affirming that they have received the pamphlet and are aware of the potential health hazards from renovating housing containing lead-based paint.

(i) The acknowledgement shall include the following language:

I have received the pamphlet entitled *Lead-Based Paint: Protect Your Family* and am aware of the potential health risks associated with renovating housing containing lead-based paint hazards.

(ii) Below the statement, the acknowledgement shall require the signature of each owner requesting the renovation, along with their dates of signature.

(iii) The type size shall be no smaller than 12-point type.

(iv) The acknowledgement may be included as a separate sheet or as a part of any written contract or service agreement.

(v) If the parties use a written contract or agreement which is written in a language other than English, the acknowledgement text shall be written in the same language as the text of the contract or agreement.

(3) Notify each owner and each head of household occupying the target housing, in writing, of the intended renovation and make the EPA pamphlet *Lead-Based Paint: Protect Your Family* available upon request. At minimum, such notification shall be accomplished by distributing written notice to each owner and each head of household occupying the target housing. The notice shall describe: The general nature and location(s) of the planned renovation activities, the expected starting and ending dates of the planned renovation activities, and a statement of how the owners and occupants can obtain the lead hazard information pamphlet, at no charge, from the renovator. These activities shall be conducted by either:

(i) The renovator.

(ii) The owner on behalf of the renovator.

(iii) If the notification activities are performed by the owner of the building on behalf of the renovator, the renovator shall retain a signed and dated statement by the owner of the dwelling describing the steps performed to notify all occupants of the intended renovation activities and to provide the lead hazard information pamphlet, at no charge,

upon request. Regardless of who performs the notification activities required under this subpart, the renovator shall be responsible for assuring compliance with this subpart and shall be liable for any failures to comply with the notification requirements in this section.

(4) If the general nature, location(s), or expected starting and ending dates of the planned renovation activities change after the initial notification has been conducted, the renovator shall provide further notification to the owners and heads of households providing revised information on the ongoing or planned activities.

#### § 745.90 Recordkeeping requirements.

Renovators shall retain all records necessary to demonstrate compliance with this section for a minimum of 3 years following completion of the renovation services on target housing. These records shall include:

(a) The address/location of the renovated target housing.

(b) A list of all heads of households occupying the renovated unit(s) at the commencement of renovations.

(c) Copies of signed and dated acknowledgements, as required by § 745.87(a)(2), from each owner and each head of household occupying a renovated unit.

(d) Copies of signed and dated acknowledgements, as required by § 745.87(b)(2), from each owner requesting renovations to common areas in multi-family dwellings.

(e) Copies of all signed and dated statements of notification, as well as copies of all notification materials sent to all owners and heads of household, as required in § 745.87(b)(3) for renovations to common areas in multi-family dwellings.

#### § 745.97 Penalties for noncompliance.

(a) Failure or refusal to comply with any provision of this subpart is a violation of TSCA section 409 (15 U.S.C. 2689), subjecting the violator to penalties under TSCA section 16 (15 U.S.C. 2615).

(b) Failure or refusal to establish and maintain records or to permit access to or copying of records, as required by this subpart, is a violation of TSCA section 15 (15 U.S.C. 2614).

(c) Failure or refusal to permit entry or inspection as required by TSCA section 11 (15 U.S.C. 2610) is a violation of TSCA section 15 (15 U.S.C. 2614).

(d) Violators may be subject to the civil and criminal penalties in TSCA sections 16 and 409 for each violation.

**§ 745.99 Effective date.**

The Federal requirements in this subpart shall take effect on April 28, 1996. In those States or Tribal lands, which have not obtained authorization, under § 745.XXX, to administer and

enforce this program, the requirements in this subpart shall apply to any renovation of target housing if the renovation was commenced on or after April 28, 1996. In States and Tribes that have obtained authorization to

implement their State/Tribal program according to the requirements in subpart X, individual State/Tribal requirements may take effect before April 28, 1996.

[FR Doc. 94-5299 Filed 3-8-94; 8:45 am]

BILLING CODE 6540-60-F